

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-59054; File Nos. SR-OCC-2008-13 and SR-OCC-2008-14)

December 4, 2008

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Changes Relating to iShares COMEX Gold Trust and iShares Silver Trust Shares

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> notice is hereby given that on July 23, 2008, The Options Clearing Corporation (“OCC”) filed with the Securities and Exchange Commission (“Commission”) proposed rule changes SR-OCC-2008-13 and SR-OCC-2008-14 as described in Items I and II below, which items have been prepared primarily by OCC. The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval to the proposed rule changes.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Changes

The proposed rule changes would remove any potential question on the jurisdictional status of options or security futures on iShares COMEX Gold Trust shares and iShares Silver Trust shares by amending the interpretation following the definition of “fund share” in Article I, Section 1 of OCC’s By-Laws.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule changes and discussed any comments it received on the proposed rule changes. The text of these statements may be examined at the places specified in Item IV below.

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.<sup>2</sup>

(A) Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

The purpose of the proposed rule changes is to remove any potential question on the jurisdictional status of options or security futures on iShares COMEX Gold Trust shares and iShares Silver Trust shares by amending the interpretation following the definition of “fund share” in Article I, Section 1 of OCC’s By-Laws. On May 30, 2008, the Commission approved rule filing SR-OCC-2008-07, which added this interpretation with respect to the treatment and clearing of options and security futures on SPDR Gold Shares.<sup>3</sup> Under the proposed rule changes, OCC would also (1) clear and treat as securities options any option contracts on iShares COMEX Gold shares and iShares Silver Trust shares that are traded on securities exchanges and (2) clear and treat as security futures any futures contracts on iShares COMEX Gold shares and iShares Silver Trust shares.<sup>4</sup>

In its capacity as a “derivatives clearing organization” registered as such with the Commodity Futures Trading Commission (“CFTC”), OCC also filed the proposed rule changes with the CFTC for prior approval by the CFTC pursuant to provisions of the Commodity Exchange Act (“CEA”) in order to foreclose any potential liability under the CEA based on an argument that the clearing by OCC of such options as securities options or that the clearing of

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<sup>2</sup> The Commission has modified the text of the summaries prepared by OCC.

<sup>3</sup> Securities Exchange Act Release No. 57895 (May 30, 2008), 73 FR 32066 (June 5, 2008).

<sup>4</sup> The exact language of the interpretation can be found at [http://www.optionsclearing.com/publications/rules/proposed\\_changes/sr\\_occ\\_08\\_13.pdf](http://www.optionsclearing.com/publications/rules/proposed_changes/sr_occ_08_13.pdf) and [http://www.optionsclearing.com/publications/rules/proposed\\_changes/sr\\_occ\\_08\\_14.pdf](http://www.optionsclearing.com/publications/rules/proposed_changes/sr_occ_08_14.pdf)

such futures as security futures constitutes a violation of the CEA. The products for which approval is requested are essentially the same as the options and security futures on SPDR Gold Shares that OCC currently clears pursuant to the rule change referred to above and an exemption issued by the CFTC.<sup>5</sup> OCC believes that this filing raises no new regulatory or policy issues.

OCC believes that the proposed interpretation of its By-Laws is consistent with the purposes and requirements of Section 17A of the Act<sup>6</sup> because it is designed to promote the prompt and accurate clearance and settlement of transactions in securities options and security futures, to foster cooperation and coordination with persons engaged in the clearance and settlement of such transactions, to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of such transactions, and, in general, to protect investors and the public interest. It accomplishes this purpose by reducing the likelihood of a dispute as to the Commission's jurisdiction, or shared jurisdiction in the case of security futures, over derivatives based on iShares COMEX Gold Trust shares and iShares Silver Trust shares. The proposed rule changes are not inconsistent with the By-Laws and Rules of OCC, including any proposed to be amended.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule changes would impose any burden on competition.

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<sup>5</sup> Supra note 3. CFTC Order Exempting the Trading and Clearing of Certain Products Related to SPDR Gold Trust Shares, 73 FR 31981 (June 5, 2008).

<sup>6</sup> 15 U.S.C. 78q-1.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Changes Received from Members, Participants, or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule changes, and none have been received.

III. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Changes

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions.<sup>7</sup> By amending its By-Laws to help clarify that options and security futures on iShares COMEX Gold Trust shares and iShares Silver Trust shares will be treated and cleared as securities options or security futures, OCC's proposed rule changes should help clarify the jurisdictional status of such contracts and accordingly should help to promote the prompt and accurate clearance and settlement of securities transactions. In accordance with the Memorandum of Understanding entered into between the CFTC and the Commission on March 11, 2008, and in particular the addendum thereto concerning Principles Governing the Review of Novel Derivative Products, the Commission believes that novel derivative products that implicate areas of overlapping regulatory concern should be permitted to trade in either or both a CFTC- or Commission-regulated environment, in a manner consistent with laws and regulations (including the appropriate use of all available exemptive and interpretive authority).

In addition, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,<sup>8</sup> for approving the proposed rule changes prior to the thirtieth day after the publication of notice in the Federal Register. The proposed rule changes are similar to the proposal previously approved by the Commission regarding the treatment and clearing of options and security futures

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<sup>7</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>8</sup> 15 U.S.C. 78s(b)(2).

on SPDR Gold Shares.<sup>9</sup> Therefore, the Commission does not believe that the proposed rule changes raise any new regulatory issues.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule changes are consistent with the Act.

Comments may be submitted by any of the following methods:

##### Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>) or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Numbers SR-OCC-2008-13 and SR-OCC-2008-14 on the subject line.

##### Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Numbers SR-OCC-2008-13 and SR-OCC-2008-14. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The

Commission will post all comments on the Commission's Internet Web site

(<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's

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<sup>9</sup> Supra note 3.

Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 am and 3:00 pm. Copies of such filings also will be available for inspection and copying at the principal office of OCC and on OCC's Web site at [http://www.optionsclearing.com/publications/rules/proposed\\_changes/sr\\_occ\\_08\\_13.pdf](http://www.optionsclearing.com/publications/rules/proposed_changes/sr_occ_08_13.pdf) and [http://www.optionsclearing.com/publications/rules/proposed\\_changes/sr\\_occ\\_08\\_14.pdf](http://www.optionsclearing.com/publications/rules/proposed_changes/sr_occ_08_14.pdf). All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Numbers SR-OCC-2008-13 and SR-OCC-2008-14 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

#### IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule changes are consistent with the requirements of the Act and in particular Section 17A of the Act and the rules and regulations thereunder.<sup>10</sup>

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<sup>10</sup> In approving the proposed rule changes, the Commission considered the proposals' impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Act, that the proposed rule changes (File Nos. SR-OCC-2008-13 and SR-OCC-2008-14) be and hereby are approved on an accelerated basis.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

Florence E. Harmon  
Acting Secretary

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<sup>11</sup> 17 CFR 200.30-3(a)(12).